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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.14901 of 2014

Kamalakannan

... Petitioner

Vs.

1. The Deputy Commissioner of Police,
Greater Chennai, In-charge A.R.
Chennai City Police, Chennai - 8.

2. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai - 8.

3. The Director General of Police,
Chennai - 4.

4. The Secretary to Government,
Home (POL.V) Department,
Fort St.George, Chennai - 9.

... Respondents

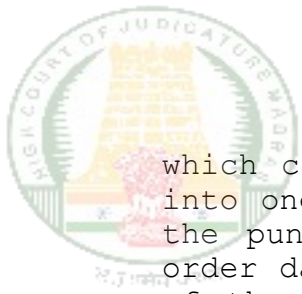
Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondents in connection with the impugned orders passed by 4th respondent in G.O.(2D) No.98, Home (POL.V) Department, dated 01.04.2014 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani,
Senior Counsel
for Mr.M.Muthappan

For Respondents: Mr.T.Chezhiyan,
Additional Government Pleader

O R D E R

When on the basis of proven charges that the petitioner had deserted his service, he was imposed with a punishment of removal from service on 26.03.1999 by the first respondent,



which came to be modified by the third respondent on 13.07.2004 into one of compulsory retirement, the petitioner had challenged the punishment before this Court in W.P.No.886 of 2007, by an order dated 10.04.2012, this Court had relied upon the decisions of the Hon'ble Supreme Court in the case of 'Bhagwan Lal Arya Vs. Commissioner of Police, Delhi' reported in '(2004) 4 SCC 560' and 'B.C.Chaturvedi Vs. Union of India' reported in '(1995) 6 SCC 749' and on an established view that the punishment of compulsory retirement was not in conformity with the proven charges, had remitted back the matter to the Disciplinary Authority, to reconsider the proportionality of the punishment alone. In this background, the fourth respondent herein, had passed the impugned order dated 01.04.2014, imposing the punishment of compulsory retirement once again. This order is under challenge in the present Writ Petition.

2. The impugned order of punishment cannot be sustained on two substantial grounds. Firstly, when this Court had remitted back the matter through its order dated 10.04.2012 in WP.No.886 of 2007, the very purpose for such remission was to reduce the original punishment of compulsory retirement. The order came to be passed on, by relying upon the decisions of the Hon'ble Supreme Court, in which it was held that in cases of unauthorised absence, the punishment of removal from service would be excessive and therefore, the High Courts require to remit back the matter to the Disciplinary Authority for reconsideration of the punishments on the ground of disproportionality. While that being so, the only option available to the respondents is to impose a lesser punishment. However, in total disregard to the purpose for which the matter was remanded back to the Disciplinary Authority, the original punishment has been reiterated in the present impugned order. On this ground, the punishment cannot be sustained.

3. Secondly, the Director General of Police, in Circulars dated 30.10.1990 and 06.12.2007, had ordered to the Disciplinary Authorities that while dealing with dismissal cases, in cases of desertion, the punishment of removal/dismissal or compulsory retirement, should not be imposed.

4. In the case of 'R.Sudhakar Vs. The Principal Secretary to Government, Home (Pol-V) Department and others', passed in W.P.No.7927 of 2015 dated 21.12.2021, I had an occasion to deal with these Circulars and thereby, had reduced the punishment of dismissal. The relevant portion of the order reads as follows:-

"2. The original punishment of dismissal from service as well as the modified punishment by the 2nd respondent herein into one of the Compulsory Retirement cannot be sustained on the sole ground



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that the Director General of Police had earlier issued Circulars dated 13.10.1990 and 06.12.2007, holding that in cases of desertion, the punishment of removal/dismissal from service or Compulsory Retirement should not be imposed. In a later circular, dated 06.12.2007, it was reiterated that these guidelines should be strictly followed, while dealing with dismissal cases and that any other minor punishment can be imposed. For the sake of clarity, the circular dated 06.12.2007 is hereby extracted,

Rc.No.235355/AP-IV(2)/2007 Office of the
Director General of Police,
Chennai-600 004.
Dated:06.12.2007

CIRCULAR MEMORANDUM

Sub: Police - Desertion cases - Head constables and Police Constables - Taking delinquents on duty - Major punishment awarded - Instructions issued - Regarding.

Ref: Circular Memo in C.No.243881/AP-1(1)/1990, dated: 30.10.1990.

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The attention of the Unit Officers is invited to the Chief Office Circular Memorandum cited.

2) In the above Circular Memorandum, clear instructions were already issued that while taking Head Constables and Police Constables for duty in desertion cases and disposing of P.Rs emanated from the delinquency of desertion, penalty such as removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment can be imposed and this guideline should be kept in view, while dealing with desertion cases.

3) While disposing of review/mercy petitions of the subordinate police personnel, I noticed that scant regard is shown to the earlier Chief Office instructions and the Superintendents of Police are still in the habit of awarding the maximum penalty of dismissal or removal from service in desertion cases after taking them



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for duty. This action is unfair, cannot be justified and consequently cannot be accepted.

4) Hence, it is reiterated that when a Head Constable/Police Constable is struck off as a deserter, notice is to be issued directing the delinquent to appear before the Superintendent of Police within two months. When he appears, Superintendent of Police should make up his mind whether the absence is on valid grounds and whether the period of absence is covered by a valid medical certificate. If Superintendent of Police is not satisfied, the delinquent should not be taken for duty. If on the other hand, Superintendent of Police is satisfied, he can be taken for duty. In such cases while disposing of P.Rs punishment of removal/dismissal from service or Compulsory Retirement should not be given. Any other punishment can be imposed and these guidelines should be strictly followed while dealing with desertion cases.

5) The above instructions should be scrupulously followed and there should not be any violation. If any deviation is found it will be viewed adversely.

6) The receipt of the Chief Office Memo should be acknowledged forthwith.

Sd/-P.Rajendran

Director General of Police

3. The original order of dismissal by the 3rd respondent, as well as the order of the Director General of Police modifying the punishment into one of the Compulsory Retirement, is in clear violation of the Circular issued by the Director General of Police. Likewise, the Director General of Police himself had violated his own proceedings by modifying the original punishment into one of the Compulsory Retirement. These kind of Circulars would be binding on all the authorities of the Government when it is issued from the highest authority of the department. As such, the very original punishment itself cannot be sustained. Consequently, it requires to be held that both the original



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punishment, as well as the modified punishment, are not only disproportionate to the impugned charges, but also violative of the procedure contemplated for imposing punishments in the aforesaid circulars."

5. On the issue of disproportionality of a punishment is concerned, the same has been dealt in various decisions of this Court, as well as the Hon'ble Supreme Court, to the effect that the ultimate punishment requires to be in conformity with the gravity of the charges. In one such decision of a learned Single Judge of this Court, in the case of R.Jayakumar Vs. The Deputy Commissioner of Police and another passed in W.P.No.26072 of 2004, dated 08.08.2008, the High Court had placed reliance on three decisions of the Hon'ble Supreme Court and interfered with the punishment of dismissal for the period of unauthorised absence of 21 days and directed the delinquent therein to be reinstated into services without the benefits of pay for the period of absence. The relevant portion of the order reads as follows:-

"11. Next point to be considered is proportionality of punishment. For the absence of 21 days, Petitioner was awarded punishment of dismissal from service. Placing reliance upon AIR 1994 SC 215 (Union of India and others v. Giriraj Sharma); (1996) 7 SCC 634 (Malkiat Singh v. State of Punjab and others); (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) and (2006) 4 MLJ 1008 (J.Patric v. Government of Tamil Nadu, rep. by its Secretary, Home (Pol.VI) Department, Chennai and others), learned counsel for the Petitioner contended that in cases where the punishment imposed is disproportionate to the charge, court can set aside the same or modify the punishment based on the facts and circumstances of the case.

12. On the other hand, learned Government Advocate would submit that as far as the Petitioner is concerned, it was not an isolated case of desertion for 21 days. But he was in the habit of deserting habitually and therefore, punishment of dismissal from service came to be passed.

13. According to the Petitioner, he was unwell and hospitalised and his family members



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could not inform the higher officials about his ill-ness and his absence was not deliberate. Charges framed for absence for 21 days.

14. In AIR 1996 SC 484:1995 (6) SCC 634 (B.C.Chaturvedi v. Union of India and others), the Hon'ble Supreme Court has decided the question as to whether Tribunal was justified in interfering with the punishment imposed by the disciplinary authority by referring to various Judgments to the effect that it is for the disciplinary authority who has to imposed penalty and normally Tribunal or High Court should not interfere. Supreme Court has further held that in cases where punishment shocks the conscience of the High Court or Tribunal, the High Court or Tribunal can either direct the disciplinary authority to reconsider the penalty or to shorten the litigation in exceptional cases and in rare cases imposed an appropriate punishment.

15. In this aspect, Hon'ble Supreme Court has laid down the law as follows:-

"..... A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

16. In AIR 1994 SC 215 (Union of India and



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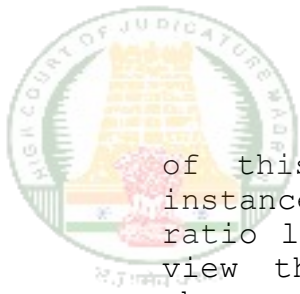
others v. Giriraj Sharma), Government Servant over-stayed the leave period subsequent to the order of rejection of application for explanation of leave. Observing that there was no wilful intention to flout the order that the punishment of dismissal merely on the ground of over-staying leave period was held to be harsh and disproportionate and the Supreme Court has ordered reinstatement with all monetary and service benefits granted with liberty to visit minor punishment.

17. In (1999) 9 SCC 86 (Syed Zaheer Hussain v. Union of India and others) the delinquent Government servant was dismissed from service on the ground of unauthorised absence for 7 days. Observing that dismissal was too harsh, Supreme Court directed the Appellant to reinstate with continuity in service with all other benefits but limiting the back wages to 50% only for the period between dismissal to the date of passing of the order by the Court. In the present case, Petitioner was absent for 21 days. It is one of the clear instance where the punishment of dismissal from service is disproportionate to the charge.

18. In the result, the impugned Orders are set aside and this Writ petition is allowed. Petitioner is ordered to be reinstated into service within a period of eight weeks from the date of receipt of copy of this order. Absence period and the period after dismissal are directed to be taken as "leave on loss of pay". However, the said period shall be taken into account for continuity of service and other benefits."

5. The aforesaid extract is self-explanatory. When the circular of the Director General of Police clearly indicates that the punishment of 'dismissal/removal from service' nor 'compulsory retirement' should not be imposed on a delinquent for charges of desertion, the punishment imposed itself is deemed to be disproportionate to the charges, as held by the Hon'ble Supreme Court and which was relied upon by this Court in the aforesaid decision. Hence, on this ground also, the impugned order of punishment cannot be sustained.

6. However, the charge of unauthorised absence cannot be left unnoticed, particularly, when it is brought to the notice



of this Court that the petitioner had earlier indulged in instances of unauthorised absence. By taking into account the ratio laid down in the aforesaid decision, this Court is of the view that if the petitioner's wages for the period of his absence is withheld, without affecting the continuity of his service, as well as other service benefits, the ends of justice could be secured.

7. In normal circumstances, this Court would remit back the matter to the Disciplinary Authority for passing fresh orders to reduce punishment. However, in the instant case, when such an option was extended by this Court and directed the fourth respondent to impose a lesser punishment, the same was disobeyed and the original modified punishment of compulsory retirement was reiterated, in total disregard to the order of this Court. In these circumstances, this Court is of the view that remanding the matter back to the fourth respondent for imposing a lesser punishment, would be a futile exercise and hence, this Court would be justified in ordering for a lesser punishment by invoking its powers under Article 226 of the Constitution of India.

8. In the light of the above observations, the impugned order of punishment dated 01.04.2014, imposing compulsory retirement on petitioner, is quashed. Consequently, there shall be a direction to the respondents herein, to pass appropriate orders, reinstating the petitioner back into service from the date of the original punishment i.e. from 26.03.1999 onwards, as if the petitioner was never dismissed from his services, together with continuity of service and other attendant service benefits, within a period of two weeks from the date of receipt of a copy of this order. However, the petitioner shall not be entitled for the back wages during his period of non-employment.

9. With the above directions, this Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

Sni

To

1. The Deputy Commissioner of Police,
Greater Chennai, In-charge A.R.
Chennai City Police, Chennai - 8.



2. The Commissioner of Police,
Greater Chennai,
Egmore, Chennai - 8.

3. The Director General of Police,
Chennai - 4.

4. The Secretary to Government,
Home (POL.V) Department,
Fort St.George, Chennai - 9.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.24204

+1cc to the Government Pleader, S.R.No.24904

W.P.No.14901 of 2014

GMR(CO)
CT 29/04/2022